

**FILED**

NOV 05 2018

Clerk, U.S. District Court  
District Of Montana  
Helena

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
HELENA DIVISION

UNITED STATES OF AMERICA

CR- 14-2-H-CCL

Plaintiff,

vs.

Order

JAMES HENRY HERNANDEZ, JR.,

Defendant.

On October 2, 2018, this Court referred a Petition for Revocation for hearing, findings of fact, and recommendation to Magistrate Judge Johnston, (Doc. No. 61). The revocation hearing was held on October 16, 2018. Pending now before the Court are the Findings and Recommendations filed by Magistrate Judge Johnston on October 18, 2018. (Doc. No. 59). Neither party has submitted an objection to the Findings and Recommendations.

**I. Findings and Recommendations**

Judge Johnston found:

James Henry Hernandez, Jr. violated the conditions of his supervised release by using methamphetamine, by failing to

provide a urine sample at the testing facility, by failing to report for urinalysis testing, and by failing to report a contact with law enforcement to his probation officer.

(Doc. No. 69 at 4).

Judge Johnston recommends that this Court:

revoke Hernandez's supervised release and commit Hernandez to the custody of the United States Bureau of Prisons for a term of imprisonment of 4 months, with 32 months of supervised release to follow. Hernandez should receive credit for time served. Hernandez should spend the first 60 days of supervised release at an inpatient treatment facility in Montana, followed by a 180-day placement at a Residential Reentry Center in Nevada. If the placement of Hernandez in a Residential Reentry Center in Nevada is not possible, Hernandez should be placed in a Residential Reentry Center in Montana.

(Doc. No. 69 at 4 – 5).

## **II. Discussion**

This Court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). The Court “must review the magistrate judge’s findings and recommendations *de novo if objection is made*, but not otherwise. *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9<sup>th</sup> Cir. 2003)(emphasis in original). The Court therefore reviews the magistrate judge’s findings and recommendations for clear error when, as in this case, neither party objects to the findings and recommendations.

Defendant admitted to having committed the violations of supervised release charged in the petition, and Judge Johnston accepted his admissions. The Court therefore finds by a preponderance of the evidence that Defendant committed nine violations of his conditions of supervised release, as charged in the petition. The Court also agrees with Judge Johnston that Defendant's violations are serious and warrant revocation of Defendant's supervised release. *See* 18 U.S.C. § 3583(e)(3).

Judge Johnston notified Defendant that his violation grade is C, his criminal history category is VI, his Chapter 7 Policy Guideline Range is 8-14 months, and that he could be incarcerated for up to 24 months. He was also notified that he could be required to serve a term of supervised release of up to 36 months. (Doc. No. 69 at 2). Neither counsel objected to these findings, and this Court agrees that the guideline range and supervised release findings made by the Magistrate Judge are correct.

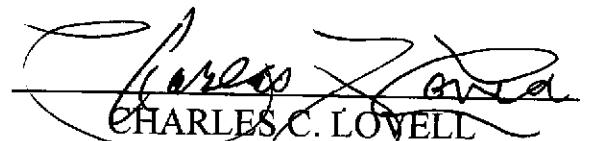
The probation officer, defense counsel and government counsel all agreed that a short term of incarceration followed by a term of inpatient and then outpatient treatment would best address Defendant's substance abuse issues. (FTR Gold recording of October 16, 2018 Hearing). Their recommendations are reflected in Judge Johnston's recommended sentence.

### III. Conclusion

Having considered the recommended sentence, the section 3553(a) statutory sentencing factors as made applicable by 18 U.S.C. § 3583(e), and the record in this case, the Court finds that the appropriate sentence should be as recommended by Judge Johnston. The Court adopts Judge Johnston's Findings and Recommendations in full and shall enter Judgment accordingly.

The Clerk shall send a copy of this order to Judge Johnston and the United States Probation Office.

Done and dated this 5<sup>th</sup> day of November, 2018.

  
CHARLES C. LOVELL  
UNITED STATES DISTRICT JUDGE